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No. 03-1388

IN THE

Supreme Court of the United States

DOUGLAS SPECTOR, *et al.*,

Petitioners,

v.

NORWEGIAN CRUISE LINE LTD.,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF OF AMICUS CURIAE JONATHAN M. GUTOFF IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether and to what extent Title III of the Americans With Disabilities Act, 42 U.S.C. §§ 12181-12189 (2000) ("Title III"), applies to companies that operate foreign-flag cruise ships within United States waters.

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae is an Associate Professor of Law at Roger Williams University School of Law in Bristol, Rhode Island. His main teaching and research interests are maritime practice procedure. Professor Gutoff's courses include Admiralty, Marine Pollution, Maritime Practice and Procedure and Salvage. For three years, from 2001-2003, he was Acting Director of the Marine Affairs Institute at Roger Williams, which, with the University of Rhode Island's Sea Grant program, sponsors symposia, research, community outreach and a joint J.D.-Master of Marine Affairs program. In addition to various presentations at symposia sponsored by the Marine Affairs Institute, Professor Gutoff has presented his work at conferences and symposia sponsored by the Universities of Pisa and Genoa, the Luso-American Foundation and the Association of American Law Schools. Professor Gutoff's work has been widely cited in articles on maritime law and international law. In addition his works have been cited by courts, including this Court, *see Lewis v. Lewis and Clark Marine, Co.*, 531 U.S. 438, 444 (2001), and by scholarly works on federal jurisdiction. *See, e.g.,* Richard H. Fallon, *et al.*, Hart and Wechsler's Federal Courts and the Federal System, 737, 738, 931 (5th ed. 2003). As a teacher of, and writer on, maritime law, Professor Gutoff has an interest in the consistent and principled application of that body of law in accord with the realities of the maritime industry.

SUMMARY OF ARGUMENT

First, since the end of the Second World War, the maritime world has seen various nations open their vessel registries to vessel owners of all nations, no matter the lack of connection between the vessel being registered and the nation operating

1. No counsel for a party authored this brief in whole or in part. No person or entity, other than the Roger Williams University School of Law, which paid for the printing of this brief through Professor Gutoff's research account, made a monetary contribution to the preparation or submission of this brief. This brief is filed with the written consent of the parties, reflected in letters on file with the Clerk.

the registry. These so-called "open registries" or "flags of convenience" generally give over their obligation to inspect and regulate vessels registered with them to private classification societies, which inspect vessels for their compliance with various requirements to ensure their safety at sea. Accordingly, nations with open registries do not have their sovereignty wrapped up with the vessels in their registries. Some nations with open registries do not have a strong sovereign presence at sea, and, some cannot be said to be fully functioning sovereign nations. Accordingly, the presumption, employed by the court below, that United States law applied to a foreign flagged vessel within United States waters would impinge the sovereignty of the flagging nation makes no sense in light of the current reality of the shipping industry in general and the cruise ship industry in particular; for, the vast majority of cruise ships fly flags of convenience and are under control not of sovereign nations, but of commercial classification societies.

Second, because a claim of discrimination by a cruise ship passenger aboard the vessel involves a claim arising out of a maritime contract and a maritime tort, the choice of law involved for such a case should be the choice of law principles established by this Court. Under these principles the law of the flag of the vessel involved is only one factor, of at least eight, to be considered. Where the flag is a flag of convenience the law of the flag should not be given very much import. Because the requiements of Title III are very much like duties imposed by the general maritime law and do not regulate the relation between employers and employee, or between the officers and crew, of foreign vessels, the general maritime law principles of choice of law should determine whether Title III applies to a foreign flagged vessel.

ARGUMENT

I.

FLAGS OF CONVENIENCE GRANTED BY NATIONS WITH OPEN REGISTRIES REPRESENT A COMMERCIAL DECISION BY VESSEL OWNERS RATHER THAN A SOVERIGN INTEREST OF THE FLAGGING NATION.

The decision of the Fifth Circuit below was based, in part, on the consideration that to apply Title III to foreign flagged cruise ships in United States waters would impinge upon the sovereignty of the nations providing those vessels with a flag. This holding is based on a misperception of the maritime industry in general and the cruise ship industry in particular. Today, many nations open their ship registries to vessel owners from around the world. These nations, for the most part, delegate their control over their merchant marine to a variety of classification societies, organizations that were founded to serve the insurance industry and provide certificates of compliance with various safety regulations. The decision of a vessel owner on where to flag its vessel is based on commercial convenience. This is especially true of the United States cruise ship industry, cruise ships operating out of the United States are, with one exception, only nominally connected to the nations whose flags they fly.

A. Background of Flags of Convenience.

The registration of a ship with a particular nation gives that vessel the protection, indicated by the flag, of the registering nation in return for an agreement by the owner and operator of the vessel to follow the registering nation's law. N.P. Ready, Ship Registration 8-9 (1991). Until recently the purpose of a nation state in maintaining a registry of merchant vessels was to be able to take advantage of their shipping capacity in time of war. Robert Rienow, Test of the Nationality of a Merchant Vessel 155- 57 (1937). It is therefore interesting, if not ironic, that the practice of registering ships with nations other than that of their owner or their base of operation has its modern

origins in the period preceding this country's entry in the Second World War. The federal government encouraged carriers bringing war material to the United Kingdom to register their vessels in Panama to avoid United States neutrality law. William Langweische, The Outlaw Sea 5 (2004).[2]

Following the Second World War, United States vessel owners became aware of the great cost savings of Panamanian registry as it freed them from United States shipping regulations. *Id.* Similarly, with encouragement from the State Department the Liberian registry was created by American oil companies for their tankers both as a means of avoiding United States regulations and a tool for foreign aid. *Id.* at 6. As this Court observed in 1953, "it is common knowledge that in recent years a practice has grown, particularly among American shipowners, to avoid stringent shipping laws by seeking foreign registration eagerly offered by some countries." *Lauritzen v. Larsen*, 345 U.S. 571, 587 (1953).

In the 1980s a large number of other nations started opening up their registries to the owners of vessels from around the world. Since then the number of open registries and vessels flying those registries flags has continued to grow. The nations providing open registries gain income from the registration fees and any taxes they may impose. The vessel owners gain freedom from regulation and, very often, taxes from the countries in which they are located or where they base their operations. Vessel owners shop around for registries that will provide them with the best possible conditions in terms of fees, regulation and access to various markets, and registries compete with each other

2. Some trace the origins to the desire of vessel owners to avoid the prohibition-era ban on the sale of alcohol aboard U.S.-registered vessels. *See* H. Edward Anderson III, *The Nationality of Ships and Flags of Convenience: Economics, Politics, and Alternatives* 21 Tul Mar. L.J. 139, 156 (1996). This Court has held, however, that the national prohibition against alcoholic beverages applied to foreign flagged vessels voluntarily entering United States waters. *Cunard S.S. Co. v. Mellon*, 262 U.S. 100 (1923).

for the business of vessel owners. Indeed there is a commercial website on which subscribers can, with the click of a mouse, comparison shop among various ship registries to find the registry best suited, in terms of cost and regulatory environment, for a vessel owner. *See* http://www.guidetoshipregistries.com (last visited Nov. 20, 2004).

For example, one nation that has recently started providing an open registry is landlocked Mongolia. Its maritime code was drafted by a Mongolian scholarship student in the Soviet Union who had accidentally been directed to study deep sea fishing, rather than fish farming. The law went into effect in 1999 and the registry opened for business in 2003. According to the administrator of Mongolia's registry, the registry earned Mongolia about $200,000 in 2003 and this year Mongolia is receiving 20-30 new registrations per month. James Book, *Landlocked Mongolia's Seafaring Tradition,* N.Y. Times, Jul. 2, 2004, sec.W, p.1 col.3.

A more troubling example is that of Liberia, whose registry contains more vessels than that of any other nation. Liberia currently administers its registry though International Registries, a firm located in Vienna, Virginia, and has its headquarters in New York. While the Liberian registry is notably successful in attracting vessel owners, it can hardly be said to represent the sovereign control of Liberia over the vessels registered in its name; for Liberia has only recently concluded a violent civil war in which large numbers of the populace were displaced and subject atrocities. *See generally* United Nations Consolidated Appeal Process , Liberia: Mid-Year Review (2004) (describing the current conditions in Liberia and the need for humanitarian aid). Currently, the United Nations is attempting to disarm and relocate over 50,000 armed men and women, and as of the middle of this year the U.N. had received only one-third of the estimated 12-20 million dollars needed to complete the initial stage of disarmament. Somini Sengupta, *Young Guns for Hire, Warriors in West Africa Need Jobs As Well as Peace Treaties,* N.Y. Times, May 23, 2004 sec.1 p.5 col.1. To be sure

the money gained by Liberia from its registry provides much needed foreign exchange for that country; however, aside from the controls of provided by its offices in the United States, Liberia cannot, and does not, exercise any effective control over the vessels in its merchant marine.

B. The Mechanics of Open Registries and Flags of Convenience.

The current understanding of a flag of convenience is the nationality provided to a vessel by an open registry. The characteristics of these registries were first comprehensively articulated in 1970 by the United Kingdom in what is generally known as the "Rochedale Report." *See generally* Committee of Inquiry into Shipping: London, H.M.S.O. 1970, Cmnd 4337. According to the Rochedale Report there are six characteristics of a flag of convenience:

> (1) the country of registry allows ownership and/or control of its merchant vessels by non-citizens;
>
> (2) access to the registry is easy; ship may usually be registered at a consulate abroad and, equally important, transfer from the registry at the owner's option is not restricted;
>
> (3) taxes on the income from the ships are either not levied locally or are very low, and registry fees and an annual fee, based on tonnage, are normally the only charges made;
>
> (4) the country of registry is a small power with no national requirement under any foreseeable circumstances for all the shipping registered, but receipts from very small charges on a large tonnage may produce a substantial effect on its national income and balance of payments;
>
> (5) crewing of ships by non-nationals is freely permitted; and

> (6) the country of registry has neither the power nor the administrative machinery effectively to impose any governmental or international regulations; nor has the country even the wish or the power to control the companies themselves.

Id. at 151.

1. National and Open Registries Compared.

A comparison between the flagging requirements of the United States and the four registries providing flags of convenience for the major cruise lines operating out of the United States—Bahamas, Bermuda, Liberia and Panama[3] — will provide a ready illustration of how a flag of convenience differs from a flag issued by a national registry. The United States requires a registered vessel to be over 5 tons and is open only to

> (1) an individual who is a citizen of the United States;
>
> (2) an association, trust, joint venture, or other entity—
>
> > (A) all of whose members are citizens of the United States; and
> >
> > (B) that is capable of holding title to a vessel under the laws of the United States or of a State;
>
> (3) a partnership whose general partners are citizens of the United States, and the controlling interest in the partnership is owned by citizens of the United States;

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3. There are many more open registries. The International Transport Workers' Federation lists 28 registries as providing flags of convenience: Antigua and Barbuda; Bahamas; Barbados; Bermuda; Bolivia; Burma; Cambodia; Cayman Islands; Comoros; Cyprus; Equatorial Guinea; the German International Ship Registry; Gibraltar; Honduras; Jamaica; Lebanon; Liberia; Malta; Marshall Islands; Mauritius; Mongolia; Netherlands Antilles; Panama; Sao Tome and Principe; St Vincent; Sri Lanka; Tonga; and Vanuatu. *See* http://www.itf.org.uk/English/flagsconvenience/countries (last visited Oct. 16, 2004).

(4) a corporation established under the laws of the United States or of a State, whose president or other chief executive officer and chairman of its board of directors are citizens of the United States and no more of its directors are non-citizens than a minority of the number necessary to constitute a quorum;

(5) the United States Government; or

(6) the government of a State.

46 U.S.C. § 12102 (2000). In addition Congress has imposed strict crewing requirements. If a vessel is built with United States subsides then all of the crew must be United States Nationals, and, in any event one-quarter of a U.S. registered vessel's crew must be citizens of this country. 46 U.S.C. § 8103(b)(1)(B) (2000). Moreover, the master, chief engineer, radio operator, and all deck and engineering watch officers must be citizens of this country.46 U.S.C. § 8103(a) (2000). United States ships are subject to inspection by the Coast Guard for compliance with United States shipping law and regulations. All this is in great contrast to requirements offered by flags of convenience.

Liberia officially requires vessels in its registry to be owned by a Liberian national entity, however, that entity may be a corporation. *See* International Ship Registry Review, The Official Guide to Ship Registries, 233 (2002). Incorporation in Liberia is task that may be accomplished in a single day. *See* http://www.liscr.com (last visited Nov. 19, 2004). Moreover, the ownership requirements may be waived when the owner qualifies and secures registration as a Foreign Maritime Entity. The Official Guide to Ship Registries at 233. Vessels up to twenty years of age may be registered, although the age limit may be waived. The Official Guide to Ship Registries at 236, and Liberia, allows vessels in its merchant marine to be inspected

by 10 separate classification societies. *See* http://www.liscr.com (last visited Nov. 19, 2004).[4]

Registration in the Bahamas, with the Bahamas Maritime Authority in London, England, requires neither corporate nor beneficial local ownership, The Official Guide to Ship Registries at 22, and there are no crewing requirements. *Id.* at 25. The minimum wage of crew members and union recognition is up to the vessel owner. *Id.* The Bahamas imposes no corporate tax and international business corporations are exempt from capital gains, real estate, inheritance, sales and customs taxes. *Id.* at 23. Income from vessels and capital gains on vessel sales is tax free. *Id.* Bahamas offers registration to vessels over 1,600 tons and less than twelve years old; however, exemptions may be granted. *Id.* at 24-25. Eight classification societies are authorized to inspect vessels for the Bahamas[5], and initial registration requires a vessel to be surveyed by a number of private surveyors located around the world. *Id.*

The Bermuda Registry of Shipping, located in Bermuda, requires that corporate vessel owners be incorporated in the United Kingdom or its territories, and that individual be British, Irish, European Union or NATO-member state nationals. *See http://www.guidetoshipregistries. com/Private/Flags/Bermuda/Bermuda%20Shipowner%20Eligibility.htm* (last visited Nov. 29, 2004). The master of the vessel must meet the same citizenship requirement as an individual owner, but there is no other nationality-based crewing requirement. *See http://www.guidetoshipregistries.com/Private/Flags/Bermuda/*

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4. American Bureau of Shipping; Bureau Veritas; China Classification Society; Det NorskeVeritas;Germanischer Lloyd; Korean Register of Shipping; Lloyd's Register; Nippon Kaiji Kyokai; Registro Italiano Navale; and Russian Maritime Register. http://www.liscr.com (last visited Nov. 19, 2004).

5. American Bureau of Shipping; Bureau Veritas; Det Norske Veritas; Germanischer Lloyd; Korean Regisry of Shipping; Lloyd's Register; Nippon Kaiji Kyokai; and Registro Italiano Navale. The Official Guide to Ship Registries at 25.

Bermuda%20Crewing.htm(last visited Nov. 30, 2004). Bermuda does not impose corporate, income, capital gains, or any withholding tax. *See* http://www.guidetoshipregistries.com/Private/Flags/Bermuda/Bermuda%20Taxation.htm (last visited Nov. 30, 2004). Most attractive to owners of smaller or older vessels, Bermuda does not impose any size or age restrictions on vessels in its registry. *See* http://www.guidetoshipregistries.com/Private/Flags/Bermuda/Bermuda%20Vessel%20Eligibility%20&%20Survey%20Requirements.htm (last visited Nov. 30, 2004). Bermuda authorizes six classification societies to inspect its vessels.[6]

The Panama Maritime Authority, whose offices are in New York City, The Official Guide to Ship Registries at 319, imposes no nationality requirements for the ownership, *id.* at 317, or crewing, *id. at* 321, of its vessels. Panama imposes no income or withholding tax for non-resident shipping companies when the income is derived from activity outside Panama. *Id.* at 317. Panama will allow registration of any size or age vessel, but vessels older than 20 years are subject to special inspection. *Id.* at 321. Panama authorized 24 classification societies[7] to inspect its vessels. *Id.* at 321

6. American Bureau of Shipping; Bureau Veritas; Det Norske Veritas; Germanischer Lloyd's Register; and Registro Italiano Navale. *See* http://www.guidetoshipregistries.com/Private/Flags/Bermuda/Bermuda%20Vessel%20Eligibility%20&%20Survey%20Requirements.htm.

7. American Bureau of Shipping; Bureau Veritas; China Classification Society; China Corporation Register of Shipping; Det Norske Veritas; Germanischer Lloyd; Hellenic Register of Shipping; Honduras International Naval Surveying and Inspection Bureau; Isthmus Bureau of Shipping; Korean Register of Shipping; Lloyd's Register; National Shipping Adjusters; Nippon Kaiji Kyokai; Panama Bureau of Shipping; Panama Marine Survey and Certification Services; Panama Maritime Documentation Services; Panama Maritime Survey Bureau; Panama Register Corporation; Registro Italiano Navale; Registro Internacional Naval, S.A.; and the Russian Maritime Register. *See* The Official Guide to Ship Registries at 321.

2. The Role of Classification Societies—The Privatization of Sovereign Authority.

Because nations offering flags of convenience generally do not have the resources to police their own merchant marines, they typically rely on classification societies to inspect vessels on their behalf. While there is nothing necessarily wrong with the inspection performed by the classification societies, and they perform a vital function in the maritime industry by facilitating the issuance of various forms of marine insurance, classification societies are private commercial entities that compete for business. By delegating their inspection function to classification societies, open registries allow vessel owners to shop not only among flagging nations, but also, and primarily, among private inspecting entities. While there may be much to be said about fostering a free market in vessel inspections and insurance, that vessel owners may choose to take advantage of one market player, by choosing to register with a particular flag and choose a particular classification society, does not indicate deep sovereign interest on the part of the registering nation.

Classification societies have their origins in the world of marine insurance. Issuers of hull insurance, that is insurance payable to a vessel owner in case of damage to or loss of a vessel, need a means of evaluating the seaworthiness of a vessel for a particular purpose. For instance, a vessel meant to carry bulk cargo in the North Atlantic will have very different structural requirements than a vessel intended to carry passengers in the Gulf of Mexico.

Classification societies set out, and inspect for, various requirements for different types, or classes of vessels. Before deciding whether to issue insurance, and at what rates, a hull insurer will look to make sure that a vessel has met its class requirements. *See* Leslie J. Buglass, Marine Insurance and General Average in the United States, 30-31 (1981). Similarly, issuers of protection and indemnity, so-called "P&I," insurance, which covers a vessel owner's liability to third parties, will require a vessel to be in class. *See* Machael A. Miller, *Liability*

of Calssification Societies from the Perspective of Untied States Law, 22 Mar. Law. 75, 84 (1997) (hereinafter "Miller"). Also, while underwriters of cargo insurance will usually not require proof of classification of a carrier's vessel, underwriters will remove coverage on learning that a vessel carrying the cargo has lost coverage and shippers will check for classification. *Id.* at 85.

For vessels flying flags of convenience, classification societies also have a quasi-public function. They inspect for compliance with a variety of international conventions, most importantly the International Convention for the Safety of Life at Sea, 1974 (with 1978 and 1988 Protocols), 14 I.L.M. 959 ("SOLAS"), and the International Convention on Load Lines, April 5, 1966, 18 U.S.T. 1857, (with 1988 Protocol), and issue certificates under The International Convention on Tonnage Measurement of Ships, June 23, 1969, TIAS 10490, 34 U.S.T. 2363, which shows the weight of the vessel as measured under international standards. *See Sundance Cruise Corp. v. American Bureau of Shipping,* 7 F.3d 1077, 1078 (2d Cir. 1993) (describing an agreement between a vessel owner and classification society for inspection of a vessel registered in the Bahamas).

Because vessel owners pay for classification societies to inspect them, and there are different societies, societies are under economic pressure to classify vessels without causing a vessel owner to incur great costs. As one marine economist has put it:

> Classification societies have no legal authority. Consequently, they compete with each other for shipowner clients, thereby raising doubts about their safety enforcement performance—given the insoluble conflict of interest between themselves and shipowners that arises when hired by shipowners to class their ships. If a society requires a shipowner to incur expenses to class his ships, the shipowner's profits will decline, all else held constant. In a competitive environment for shipowner clients, and when shipowners themselves are facing stiff

> competition, societies are under pressure to reduce their safety demands, possibly classing non-seaworthy ships.

Wayne K. Talley, *Regulatory Issues: The Role of International Maritime Institutions,* available at http://www.oduport.org/REGULATORYISSUES.htm (last visited Nov. 28, 2004).[8]

Whether or not private classification societies provide generally effective regulation, their use by open registries for compliance with national requirements allows vessel owners to shop twice, once for the registry with the most favorable terms, and again among classification societies approved by the registry.

C. Flags of Convenience and the Cruise Ship Industry

Because the cruise ship industry provides what are, in many instances, domestic vacation services and because the cruise ship industry relies heavily upon flags of convenience, to allow foreign registry of a vessel *automatically* to defeat the application of Title III of the ADA to cruise ships in domestic waters would, allow a large part of the leisure industry, essentially under regulation by no sovereign, to avoid United States policy by a simple commercial choice—where to flag a cruise ship. For

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8. To be sure, the economic pressures on classification societies are not one-sided. If insurers and shippers cannot trust a classification they will not insure or ship with vessel classed by untrustworthy societies. Ten classification societies, as members, and two others as associate members now form International Association of Classification Societies ("IACS'), to for prescribe minimum standards for members. These standards are designed to prevent "classification society shopping." Miller, 22 Mar. Law.at 77. The members of the IACS are American Bureau of Shipping, Bureau Veritas, China Classification Society, Det Norske Veritas, Germanisher Lloyd, Korean Register of Shipping, Lloyd's Register, Nippon Kaiji Kyokai, Registro Italiano Navale, and the Russian Maritime Register. The associate members are the Croatian Register of Shipping and the Indian Register of Shipping. *See* http://iacs.org.uk/members.htm (last visited Nov. 29, 2004). There are, however, over 50 classification societies.

most nations offering flags of convenience all extent of control is checking that a vessel owner has paid its fees and that certificates have been issued by a private organization hired by the vessel owner. And this is the extent of sovereign control under which most cruise ships operate.

As their name implies, many United States cruise voyages depart and return from the same port. Many others, notably the cruises of the Alaskan coast spend most of their time in United States waters. The Passenger Services Act of 1886, 46 U.S.C. app. § 289 (2000), prohibits foreign-flagged vessels from transporting passengers between United States ports. These so-called cabotage regulations were designed to protect the United States merchant marine. Whatever their benefits to the domestic passenger ferry industry, the cabotage rules have little impact on the cruise industry. They do not prevent foreign-flagged vessels going from a United States port and back. Similarly the cabotage rules do not prevent a vessel owner from taking passenger on a cruise from a United States port and returning them by air, or from flying passengers to foreign ports and then taking them on a cruise to a United States port. *See* Kay Showker & Bob Schlinger, The Unofficial Guide to Cruises 1999, at 9 (1999) (stating that "the spectacular growth in cruise vacations really took off . . . when cruise lines discovered the benefits of joining forces with airlines.") Even in Alaskan cruises, where the ship will ply the coastal waters of Alaska allowing passengers to see and visit that State's spectacular coast line, owners are able to avoid United States cabotage laws by bussing their passengers from Seattle to Vancouver, British Columbia, to board their vessels. *See* 10 Benedict on Admiralty § 2.02 at 2-2 (7th rev. ed. 2003). As a result there is no effective requirement that cruise ships serving the United States market be registered in this country.

Thus, nearly "all of the major cruise lines operating in the North American market from ports in the U.S. register their ships with 'flags of convenience.'" Stephen Thomas, Jr., *State Regulation of Cruise Ship Pollution: Alaska's Commercial*

Passenger Vessel Compliance Program as a Model for Florida, 13 J. Transnat'l L. & Pol'y 533 , 540 (2004). Starting this year, Norwegian Cruise Lines has had one, and, in 2005, plans to have another, United States-registered vessel; however, the vessels are for the coastwise market in Hawaii, and Norwegian Cruise Lines still runs foreign-flagged vessels out of Hawaii to Fanning Island, in the Republic of Kiribati. *See* http://www.ncl.com/ destinations/hawaii/ index.htm (last visited Nov. 29, 2004).

To hold that a foreign flag, *per se*, exempts a vessel owner from compliance with Title III would exempt the cruise ship industry, a large part of the United States leisure market, from compliance with the statute. And in most, if not all cases, no great competing interest of a foreign sovereign would be served by this exemption. For example, in the case of a Alaskan tour operator bussing United States passengers from Seattle to Vancouver for a cruise in United States waters off the coast of Alaska in a vessel registered in Liberia, the Seattle hotel in which the passengers might stay for a day would have to comply with Title III, as would the bus carrying passengers for a few hours; however under the Fifth Circuit's holding the vessel in which United States passengers might spend two weeks in United States waters would be exempt. To hold that Liberia has a greater interest in the non-application of Title III a United States Passenger to a vessel operated in United States waters than the United States has in its application simply because the vessel is registered in Liberia's offices in the United States and is inspected by a private organization approved of by Liberia makes no sense.

Similarly, no classification society has anything to say about disability access, so classification is not contrary to any requirements imposed by Title III, and nothing inTitle III is directly contrary either to SOLAS or to the requirements of classification. To be sure, some international safety requirements might mean that a cruise ship might not be made as accessible to persons with certain disabilities as are similar land based

structures, like hotels. For example, because a vessel needs to have a water tight and compartmentalized (that is, requiring raised thresholds in the doorways) bulkhead deck to restrict flooding in a vessel, an entire vessel might not able to be made accessible to persons confined to wheelchairs. Indeed, the recent proposed Title III regulations for passenger vessels take into account the requirements of a watertight bulkhead deck. *See* Draft Passenger Vessel Accessibility Guideline and Supplementary Information, V206.2, Exception 4, available at http://www.access-board.gov/pvaac/ guideline.htm (last visited Nov. 29, 2004). That does not mean, however, that a vessel's upper decks cannot, and should not be make as accessible as possible.[9]

This is not to say that a foreign flag, even a flag of convenience, should be ignored in considering the application of Title III or other United States law. Rather, the interest of the sovereigns with a stake in the outcome of the case should be intelligently balanced. Happily, for maritime cases, this Court has developed a methodology for choice of law that takes into account not just the flag of a vessel, but also the other various interest involved in an action where a plaintiff seeks to apply United States law to the owners of a foreign vessel. It is this methodology that should apply to the applicability of the Title III to foreign flagged vessels in United States waters.

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9. Of course, were Title III to render either SOLAS compliance or classification impossible none of the many passenger and car ferries that ply United States waters and are registered in the United States would be able to pass inspection or to obtain insurance.

II.

BECAUSE THE DISCRIMINATION ALLEGED BY MR. SPECTER COMES WITHIN THE ADMIRALTY JURISDICTION OF THE FEDERAL COURTS WELL-ESTABLISHED ADMIRALTY OF CHOICE-OF-LAW PRINCIPLES APPLY TO HIS CLAIM.

Mr. Spector's claim of discrimination arises out of a maritime contract, contract of passage. Also, the treatment Norwegian Cruise Lines gave to Mr. Specter occurred on the navigable waters of the United States, arises out of a traditional maritime activity—the carriage of passengers, and poses a threat to maritime commerce by inhibiting the ability of disabled passengers to take advantage of cruise ship services. Thus, it constitutes a maritime tort. From the very beginning of this country's judiciary the federal courts have had jurisdiction over maritime torts and contracts. The general maritime law of the United States has a variety of doctrines that protect the life and safety of seamen and passengers at sea. These doctrines, which include the warranty of seaworthiness to seamen, as well as negligence and products liability for all at sea, impose requirements for vessel safety—including construction, equipping and crewing—to all to whom they apply. Nonetheless, this court has concluded that these doctrines may apply to foreign flagged vessels, and has established a methodology for deciding when federal maritime law applies to claims arising under the federal admiralty jurisdiction. Because shipboard claims of disability-based discrimination against a passenger fall within the admiralty jurisdiction, this Court's this methodology for admiralty choice of law should apply.

A. Mr. Spector's Claim is Within the Admiralty and Maritime Jurisdiction of the District Courts.

Article III of the Constitution extends the judicial power of the United States to, among other matters, "all cases of admiralty and maritime jurisdiction." U.S. Const. Art. III, § 2, cl. 1. The First Congress gave the District Courts "exclusive jurisdiction

in all civil cases of admiralty and maritime jurisdiction, saving to suitors all remedies to which they are entitled at common law." An Act to Establish the Judicial Courts of the United States, ch. 20, § 9, 1 Stat. 73, 77 (1789). That grant now exists in 28 U.S.C. § 1333(1) (2000), which extends the jurisdiction of the District Courts to any "civil case of admiralty and maritime jurisdiction saving to suitors all other remedies to which they are otherwise entitled." When a case falls within the admiralty jurisdiction, whether or not it is brought pursuant to that jurisdiction in federal court, and even if it is brought in state court, maritime choice of law principles will apply. *See Keremec v. Compagnie Transatlantique* 358 U.S. 625, 628-29 (1959), *see also Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 411 (1953) ("[S]ubstantial rights . . . are not to be determined differently whether [a] case is labelled 'law side' or 'admiralty side' on a district court's docket"), *quoted in Norfolk Southern Ry. Co. v. Kirby,* 125 S. Ct. 385, 392 (2004).

The admiralty jurisdiction extends to all contracts that are of a maritime nature, *Kirby,* 125 S. Ct. at. 393 (citing cases), and, as this Court held in *The Moses Taylor*, 71 U.S. 411 (1866), a contract of carriage of a passenger is subject to the admiralty jurisdiction of the federal court. *Id.* at 427. Accordingly, the contract between Mr. Specter and Norwegian Cruise Lines was a maritime contract.

In tort the grant of admiralty jurisdiction in 28 U.S.C. § 1333(1) extends to those torts occurring on the high seas and on the navigable waters of the United States and, at least where the tort occurs on the navigable waters of the United States, this Court has required that there be a connection with traditional maritime activity such that the tort have a significant connection with traditional maritime activity and there be a threat of disruption to maritime commerce. *See Sission v. Ruby,* 497 U.S. 358, 363-65 (1990); *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.,* 513 U.S. 527, 534 (1995). While not all cases that occur on a vessel in navigable waters will come within the admiralty jurisdiction this court has explained that they

usually will. *See Grubart* 513 U.S. at 541-42. In this case there can be no doubt that the discrimination suffered by Mr. Specter comes within the admiralty jurisdiction. The carriage of passengers is a traditional maritime activity, and, as one District Court has noted, "opulent cruise ships have been part of the world's maritime tradition at least since the launching of Cleopatra's barge." *Friedman v. Cunard Line Ltd.,* 996 F. Supp. 303, 307(S.D.N.Y. 1998). Moreover, discrimination against and mistreatment of passengers of a particular class threatens to disrupt that class's ability to take part in the maritime commerce.

Indeed, claims of discrimination against passengers have long been recognized as part of the law of admiralty. In *Chamberlin v. Chandler,* 5 F.Cas. 412 (C.C.D. Mass. 1823) (No. 2,575) the court considered the case of a woman who had booked passage on a vessel from Hawaii to Boston and who was subjected to treatment that caused her to confine herself to her cabin. In the course of awarding punitive damages for the defendant's tortuous conduct, Justice Story, sitting on circuit, explained the nature of a contract of passage as being:

> not for mere ship room, and personal existence, on board; but for reasonable food, comforts, necessaries, and kindness. It is a stipulation, not for toleration merely, but for respectful treatment, for that decency of demeanor, which constitutes the charm of social life, for that attention, which mitigates evils without reluctance, and that promptitude, which administers aid to distress.

Id. at 414. *Accord, Kornberg v. Carnival Cruise Lines,* 741 F.2d 1332, 1334 (11th Cir. 1984); *Chicago, D. & G.B. Transit Co. v. Moore,* 259 F. 490 (6th Cir.), *cert. denied*, 251 U.S. 553 (1919); *The Oregon,* 133 F. 609, 617-18 (9th Cir.1904); *Defrier v. The Nicaragua*, 81 F. 745 (S.D. Ala. 1897). Thus, without reference to the ADA the general maritime law gives relief to disabled passengers where a vessel owner knew or should have known of the passenger's disability and failed reasonably to accommodate that disability. *See Alpert v. Zim Lines,* 370 F.2d

115, 116 (3d Cir. 1966); *American President Lines, v. Lundstrom,* 323 F.2d 817, 818 (9th Cir. 1963).

Because this case arises out of a maritime contract and involves a tort on the navigable waters which bears a significant relation to traditional maritime activity and has a potential to disrupt maritime commerce it falls within the admiralty jurisdiction of the federal courts. Therefore, the choice of law principles articulated by this Court for admiralty cases should apply.

B. Admiralty Choice of Law Principles Involve a Consideration of a Variety of Factors in Addition to The Flag of the Vessel and Applies to Laws the Have the Potential to Affect the Structure of A Vessel, As Opposed to Labor-Management Relations.

1. Admiralty Choice of Law Principles Involve More than Consideration of the Flag of a Vessel.

In a series of three cases this Court has articulated the principles for choice of law in cases subject to the admiralty jurisdiction of the district courts. In *Lauritzen v. Larsen*, 345 U.S. 571 (1953), this Court considered whether the of the Jones Act, 46 U.S.C. app. § 688 (2000), which by its terms authorizes "any seaman" to bring an action against a "defendant employer" for negligence, applies to an injury to an alien seaman on a foreign-flagged vessel. The court set out seven factors to be considered: (1) the place of the wrongful act; (2) the law of the flag; (3) the allegiance or domicile of the injured party; (4) the allegiance of the ship owner; (5) the place of the contract; (6) the inaccessibility of the foreign forum; and (7) the law of the forum. *Id.* at 583-91.[10]

10. The *Lauritzen* Court distinguished that case from one where an injured United States citizen would seek relief, noting that "each nation has a legitimate interest that its nationals and permanent (Cont'd)

Subsequently, in *Romero v. International Terminal Operating Co.*, 358 U.S. 354 (1959), the Court decided that not only claims under the Jones Act, but also those arising under the general maritime law should be subject to the *Lauritzen* choice of law analysis. *Id.* at 381.

Finally, in *Hellenic Lines Ltd. v. Rhoditis,* 398 U.S. 306 (1970) this Court cautioned that the factors listed in *Lauritzen* were meant neither to be applied mechanically nor to be exclusive. *Id.* at 309. Rather, the court concluded that the ships base of operations, along with other possible factors, was another factor to be considered. *Id.* at 308-09.

Accordingly, under the *Lauritzen-Romero-Rhoditis* trilogy there are at least eight factors to be considered in determining whether foreign or domestic law will apply in an action within the admiralty jurisdiction. The flag of the vessel involved is only one. Thus in *Rhoditis* the Court concluded that United States law should apply to an action by a seaman of Greek nationality who had signed an employment agreement in Greece for work aboard a Greek owned and flagged vessel, and who was injured on that vessel, where the injury took place in United States waters, the vessel owner was a resident alien of the United States, and had his base of operations in New York, and the owners vessels had their major source of income from shipping to and from the United States. Accordingly, after *Rhoditis* lower courts have applied the general maritime law of the United States to foreign seamen on foreign vessels. *See, e.g., Karvelis v. Constellation Lines S.A.*, 806 F.2d 49, 50-51 (2d Cir. 1986), *cert. denied sub nom., Constellation Lines, S. A. v. Karvelis,* 481 U.S. 1015 (1987). Indeed even though the *Lauritzen* Court

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inhabitants be not maimed or disabled from self-support." 345 U.S. at 586. As the authors of a leading work on maritime law have explained, "the fair implication of [the language in *Lauritzen*] is that American law applies to Ameican citizens . . . whether they serve on American-flag or foreign flag ships. . . ." Grant Gilmore & Charles L. Black, Jr., The Law of Admiralty 476 (2d ed. 1975).

stated that the law of the flag-state "must prevail unless some heavy counterweight appears," 345 U.S. at 586, the *Lauritzen* Court itself, *see* 345 U.S. at 587, and various lower courts have made "equally clear that the law of a flag of convenience state is not entitled to the same conclusive effect as that of a 'legitimate' flag state and cannot be used to oust otherwise applicable law." *Pandazopoulos v. Universal Cruise Line, Inc.*, 365 F. Supp. 208, 214 (S.D.N.Y. 1973) (citations omitted).

While the proper application of the *Lauritzen-Romero-Rhoditis* factors depends on a case by case analysis—the injury to an a United States citizen aboard a round-the-world bound vessel based in a foreign country and simply stopping to pick up passengers in a United States port, might result in a different conclusion from that where a United States Citizen is injured on board a United States-based vessel that departs and returns to a port in this country—exclusive reliance on vessel's flag, without any consideration of the nature of that flag or the other factors outlined in *Lauritzen* and *Rhoditis* is contrary to the proper analysis this Court has established for maritime cases.

2. The *Lauritzen-Romero-Rhoditis* Choice of Law Analysis is Applicable to Claims Relating to Ship Management and Construction.

The Fifth Circuit below relied on this Court's decisions in *Benz v. Compania Naviera Hidalgo, S.A.*, 353 U.S. 138 (1957) and *McCulloch v. Sociedad Nacional de Marineros de Honduras*, 372 U.S. 10 (1963) to conclude that Title III of the ADA could not apply to foreign flag vessels because there was no express intent by Congress to apply the ADA extraterritorially. *See Spector v. Norwegian Cruise Line, Ltd.*, 356 F.3d 641, 644-45 (5th Cir. 2004). According to the Fifth Circuit, the structural changes mandated by Title III would have a permanent, extra-territorial effect on the structure of a foreign-flagged vessel, which would impinge on the sovereignty of the flagging nation. *Id.* at 648. As explained above, that argument has no foundation. Moreover, it proves too much; for, if no law having an impact on the structure on vessel were applicable to foreign flagged

vessels, then neither the Jones Act, nor large portions of the general maritime law would be applicable to foreign flagged vessels.

As this Court held in *Lauritzen*, the question of whether the Jones Act is applicable aboard foreign flagged vessels involves a balancing test, and whether the general maritime law of the United States applies to claims involving foreign flagged vessels should be analyzed under the standards set out in *Lauritzen*. *See Romero* 358 U.S. at 381. Both the Jones Act and the general maritime law of the United States provide ample basis for imposing on vessel owners and operators changes in the structure and management of their vessels to insure the safety of passengers and crew.

As explained above, the Jones Act, provides "any seamen" with an action for negligence against the seaman's employer. While a Jones Act action may be based on violation of a statutory duty, *see Kernan v. American Dredging Co.*, 355 U.S. 426, 432 (1958), it may also be based on breach of a non-statutory duty of care, such as the requirement to furnish a seaman with proper equipment to perform a task the employer could have anticipated. *See, e.g., Ferguson v. Moore-McCormack Lines, Inc.*, 352 U.S. 521, 522-23 (1957) (concluding that failure to furnish a shipboard baker with an implement safely to serve hard-frozen ice cream may result in Jones Act liability).

In addition to the Jones Act, the general maritime law provid[illegible]eamen with an action for seaworthiness. The doctrine of seaworthiness imposes on a vessel owner the non-delegable duty of providing to seamen a vessel that is fit for its intended voyage. *See Mitchell v. Trawler Racer, Inc.*, 362 U.S. 539, 548-49 (1960); *Mahnich v. Southern S.S. Co.*, 321 U.S. 96, 100-101 (1944). As a form of strict liability, seaworthiness had, by the middle of the twentieth century, become the primary vehicle for recovery by injured seamen. *Moragne v. States Marine Line, Inc.*, 398 U.S. 375, 399 (1970). The warranty of seaworthiness applies to the hull of a ship, the ship's cargo-handling machinery,

hand tools aboard the ship, ropes and tackle and to all other equipment either belonging to the ship or brought aboard by stevedores. *See Italia Societa per Azioni di Navigazione v. Oregon Stevedoring Co,* 376 U.S. 315, 322-23 (1964); *Michalic v. Cleveland Tankers, Inc.* 364 U.S. 325, 328 (1960); *Crumady v. The Joachim Hendrik Fisser,* 358 U.S. 423, 427 (1959). Moreover, the crew itself is warranted as seaworthy. *See Waldron v. Moore-McCormick Lines*, 386 U.S. 724, 726 (1967); *Boudin v. Lykes Brothers Steamship Co.*, 348 U.S. 336, 339-40 (1955).

While there has been general agreement that the warranty of seaworthiness does not extend to passengers, *see Kermarec,* 358 U.S. at 628, passengers are owed a duty of reasonable care. *Id.* at 630. Fulfilling that duty may require that a vessel owner to make modifications to the structure of vessel where the owner knows, or has reason to know that the vessel is unsafe. *See Harnesk v. Carnival Cruise Lines,* 1992 A.M.C. 1857 (S.D. Fla. 1991) (holding a vessel owner liable for a negligently constructed bathroom); *Beretta v. Home Lines, Inc.,* 1990 A.M.C. 1857 (S.D.N.Y. 1990) (same); *Keefe v. Bahama Cruise Lines, Inc.*, 715 F. Supp. 1069 (M.D. Fla. 1989) (holding vessel owner liable for injury caused by a slippery, uncovered outdoor dance floor), *aff'd* 902 F.2d 959 (11th Cir. 1990); *Oispuk v. Oceanic Steam Navigation Co.,* 58 F.2d 673 (S.D.N.Y. 1932) (holding vessel owner liable for negligently failing to provide an outside door with a vestibule or to furnish a control to slow down the door's closing).

Finally, the general maritime law recognizes the doctrine of products liability. *See East River S.S. Corp. v. Transamerica Deleval, Inc.,* 476 U.S. 858, 873-74 (1986). The ability to hold a manufacturer or vendor strictly liable for the products it puts into commerce doctrine may not impose liability directly on a vessel owner. However, the ability of passengers to bring an action for unreasonably dangerous product aboard a vessel will have an effect on the construction of the vessel and the fittings with which it is equipped. *Cf. Silivanch v. Celebrity Cruises, Inc.,* 171 F. Supp. 2d 241 (S.D.N.Y. 2001) (entering judgment

on passengers' claims of strict products liability and negligence against filter manufacturer and negligence against vessel owner for a whirlpool spa that caused a shipboard outbreak of legionnaire's disease), *app. dismissed* 333 F.3d 355 (2d Cir. 2003), *cert. denied sub. nom., Essef Corp. v. Silivanch,* 124 S. Ct. 1047 (2004).

Accordingly, both the Jones Act and the general maritime law have potential to require permanent alteration in a ship's structure and equipment. For example, the law of seaworthiness may require a vessel owner to change the way it maintains equipment on board, *see Crumady,* 328 U.S. 427-28, or to alter the type of tools it makes available to the crew of the vessel. *See Michalic,* 364 U.S at 328-29. These duties do not differ in their level of internal interference with a vessel's operations from those imposed by Title III, and there is no reason why passengers complaining of the safety of a bathroom or a whirlpool spa should be able to take advantage of United States law, but those denied access to same facilities should be, *per se,* barred from that law's protection.

Because the Fifth Circuit's holding prohibits application of domestic law that could require the alteration of the structure of a vessel, the Jones Act, the doctrine of seaworthiness, and the United States maritime law of negligence and products liability could never be applicable to foreign flagged vessels, and that is clearly contrary to the point of the *Lauritzen-Romero-Rhoditis* trilogy, which is to decide whether or not claims under the Jones Act and the General Maritime Law of the United States should apply to foreign flagged vessels.[11]

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11. If *Romero's* understanding of choice of law and the Fifth Circuit's holding are both to survive, it would result in the odd situation of the general maritime law regarding vessel safety and conditions, which has been fashioned by the judiciary, being applicable to foreign flagged vessels, but, absent some specific declaration of Congress, Congressional enactments would never applicable. Indeed, given this Court's deference to Congressional action in the area of maritime law, *see Norfolk*

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A much better reading of *Benz* and *McCulloch* in conjunction with *Romero* would be to hold that the "internal affairs" of a vessel constitutes labor-management relations, and that absent some specific statement from Congress, laws relating to labor relations would not have any applicability to foreign flagged vessels; however, where a statute concerns areas presently addressed by the general maritime law, including the treatment of passengers, it should be treated under the usual maritime choice of law analysis. The Court's opinion in *McCulloch* and subsequent case law demonstrate that this is the correct reading.

The *McCulloch* Court considered the use of the balancing test proposed by the National Labor Relations Board (the "NLRB") to see whether it had jurisdiction over an attempt to organize by foreign seamen working on a foreign vessel. 372 U.S. at 15. The court held that the foreign flag of the vessel *per se* excluded the NLRB's jurisdiction over the effort by the foreign seamen to organize. The court emphasized that a balancing test would not be appropriate in dealing with the "internal discipline and order" of a foreign vessel, *id.* at 19, and concluded that there it would not infer the authority to interfere with the "management and internal affairs" of a foreign vessel. *Id.* at 20. In the context of the case the only reasonable reading of "management and internal affairs" is labor-management relations, not the sort of vessel conditions covered by doctrines of negligence, under the Jones Act, and seaworthiness and regulated by Title III. Thus the Court acknowledged that its

> conclusion does not foreclose such a procedure in different contexts, such as the Jones Act, 46 U.S.C. § 688, where the pervasive regulation of the internal order of a ship may not be present.

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Shipbuilding & Drydock Corp. v. Garris, 532 U.S. 811, 820 (2001); *Miles v. Apex Marine Corp.*, 498 U.S. 19, 21 (1990), such a position would make no sense.

372 U.S. at 19 n.9. The Court defined "management and internal affairs" of a vessel by associating it with "internal order" in opposition to the physical conditions regulated by the Jones Act.

To be sure the Court went on to note that for the Jones Act the *Lauritzen* Court had emphasized the "cardinal importance of the law of the flag." *Id.* (citing *Lauritzen*). Nonetheless, only four years *after McCulloch,* in *Rhoditis,* this Court expanded the reach of the Jones Act by adding the base of operations as another, and in that case determinative factor, to its choice of law balancing test. *Rhoditis* demonstrates that *McCulloch* did not change this Court's understanding set out in *Lauritzen* and *Romero* that claims under for negligence under the Jones Act and unseaworthiness under the general maritime law, both of which could effect the structure of a vessel, could be brought for claim arising on a vessel with a foreign flag.

In this case Title III, like the Jones Act and the law of seaworthiness negligence and products liability speaks, only to the physical conditions on a vessel—in Title III's case for passengers—not to the master, owner, or employer's managerial relations with the crew, and should be subject to a similar choice of law test. Moreover, Congress can be assumed to have been aware of the applicability of the *Lauritzen-Romero-Rhoditis* test at the time it enacted Title III.

C. Congress Was Aware of the *Lauritzen-Romero-Rhoditis* Test When It Enacted Title III.

This Court has explained that it will assume that Congress is familiar with the law when it enacts legislation, no less in maritime cases than in any other. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990). In this case, an assumption that Congress was aware of this Court's maritime choice of law jurisprudence at the time of Title III's enactment would be especially valid; for, prior to the enactment of Title III Congress had legislated in response to the application of that jurisprudence in the lower courts.

In 1982 Congress amended the Jones Act to add what is now 46 U.S.C. app. § 688(b), which excludes from the act's coverage aliens working in energy and mineral exploration in the waters, or above the continental shelf of foreign countries. *See* Act of Dec. 29, 1982, P.L. 97-389, Title V, § 503(a), 96 Stat. 1955. The 1982 amendments were enacted along with the rest of a House Bill, the Fisheries Amendments of 1982, H.R. 3942, 97th Cong., 2d Sess. (1982). The Jones Act amendments provision of that bill, section 503, was adopted from H.R. 4863, 97th Cong., 2d Sess. (1982). *See* 128 Cong. Rec.H. 7,631 (daily ed. Sept. 28, 1982). The committee report on H.R. 4863, H.R.Rep. No. 97-863, 97th Cong., 2d Sess., 1982, explained the purpose of the amendment:

> The courts have generally found that the substantive rights granted by the Jones Act do not extend to foreign nationals who lack sufficient contacts with the United States. These court decisions are not a denial of equal access but rather a determination of lack of standing. The decisions generally hold that the litigant has no right which can be enforced in a U.S. court. H.R. 4863 codifies this case law and clarifies that the substantive rights granted by the Jones Act do not extend to foreign offshore workers.
>
> The legislation is in accord with customary international law and international agreements in that it recognizes the rights of a nation to regulate activity within its territorial waters and in the Outer Continental Shelf adjacent to the coast of that nation. The present situation whereby domestic United States law is applied to actions and occurrences within the jurisdiction of a sovereign foreign nation is an unwarranted application and extraterritorial extension of U.S. law and not in accord with our treaties of friendship and navigation.

Id. at 7. Congress was, in fact, aware of the efforts by foreign seamen to extend the Jones Act, along with the general maritime

law of the United States, to foreign seamen in foreign waters. While Congress did not approve of such an extension, and codified its rejection by the lower courts, it did nothing to change the avoid the result in *Rhoditis,* which concluded that a foreign plaintiff injured on a foreign vessel in United States waters could recover under the Jones Act. *A fortiori,* it would appear that Congress approved of recovery by a United States plaintiff injured aboard a foreign vessel in United States waters.

Congress' understanding of the Jones Act should be read as background to the passage of Title III; for, as noted above, Title III, like the Jones Act does not interfere with labor management relations aboard a ship. Indeed, because it does not apply to employees Title III is less intrusive on a vessel's "management and internal affairs" than the Jones Act. The foreign status of a vessel should not, *per se,* preclude recovery under Title III; rather the applicability of Title III should be determined by the familiar *Laruitzen-Romero-Larsen* test.

CONCLUSION

For all the forgoing reasons, this Court should reverse the judgment of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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